PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports for March.

Banks and Banking, Cheque, Forged Indorsement, Liability of Banker

In a very interesting case recently tried in the Commercial Court at London, before Collins, J., without a jury, it appeared that a cheque was drawn in London in favor of the plaintiff on the defendant bank, which carried on business in London and had a branch in Paris. This cheque was specially indorsed by the plaintiff to a firm in London and mailed to that firm for collection, but it never reached them. After it had been mailed, a forged indorsement was put on the cheque, and it was presented at the defendants' Paris branch by a person purporting to be the last indorser, who had no account at the defendants' banks. When presented, it was crossed generally. The Paris branch paid the cheque, and sent it to the London bank, which credited the Paris bank with the value. The London bank refused to deliver the cheque to the plaintiff, who thereupon sued it for conversion. The judge held, (1) That by paying the cheque, forwarding it to the London bank, and crediting their Paris bank with the value, the defendants were guilty of a conversion of the cheque in England, and the case was therefore governed by English law; (2) That the person who obtained payment of the cheque was not a "customer" of the bank, within the meaning of p. 82 of the Bills of Exchange Act, 1882, (45 & 46 Vict. c. 61,) which provides that "where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment; and (3) That the defendants, having paid the cheque on a forged indorsement, were not

protected by any of the provisions of the act above cited, but were liable for the value of the cheque under § 24 of that act, which declares that "subject to the provisions of this act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:" *Lacave* v. *Crédit Lyonnais*, [1897] 1 Q. B. 148.

On the other hand, the Superior Court of Pennsylvania has recently decided, that the rule that when one or two innocent persons must suffer loss the party who did the act which was the occasion of the loss ought to bear it, does not apply where a depositor in a bank, without its knowledge, had made a rubber stamp which was a substantial facsimile of his signature, and that stamp was stolen from his clerk by an office boy, and used in forging cheques, which the bank paid. It accordingly held the bank liable for the amount of the cheques: *Robb* v. *Penna. Co.*, 3 Pa. Super. Ct. 254.

Forged Cheque, Liability to Depositor

This decision seems to rest upon the ground that the bank was negligent in paying a cheque with a stamped signature; and under the facts of the case that contention may be justified. It does not appear that the plaintiff had ever signed a cheque with this stamp; and no matter how well made, a stamp signature must necessarily have a regularity of outline or a broadness of impression that a pen-and-ink signature lacks. The two, therefore, are sufficiently different to be readily distinguishable; and the bank was negligent in not scrutinizing the cheque with sufficient care to notice that the signature was not made as usual. But if the plaintiff had been in the habit of signing cheques with this stamp, or had occasionally so signed them, or if the bank had known that he possessed this stamp, there would have been no negligence in paying the cheques, and the bank would not have been liable.

Carriers, Rejection of Passengers, Blind Person

The Supreme Court of Mississippi lately refused to extend the rule which permits a common carrier to refuse to accept for passage persons who are so infirm as to require the care of an attendant, to the case of one, who, though blind, was strong and robust; and held that the agents of the company were guilty of a wrong in refusing to sell such a person a ticket solely on the ground that he was blind, and not accompanied by any one: *Zachery* v. *Mobile & O. R. R. Co.*, 21 So. Rep. 246.

Conflict of Laws

In *Turner* v. *St. Clair Tunnel Co.*, 70 N. W. Rep. 146, where the defendant company had sent the plaintiff, who was in its employ on the American side of the St. Clair Tunnel, over to the Canadian side, to work at that entrance, the Supreme Court of Michigan decided that the right of the plaintiff to recover for the negligence of the defendant in allowing him to enter on dangerous work there was governed by the laws of Canada.

Conspiracy, What Constitutes Agreement to Fix Insurance Rates

An agreement to fix uniform rates of insurance has been held to be within the meaning of a statute (McClain's Code Iowa, § 5454) which provides that "if any corporation organized under the laws of this state or any other state or country, for transacting or conducting any kind of business in this state, or any partnership or individual, shall, create, enter into, become a member of or party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour, provisions, or any other commodity or article whatever; or shall create, enter into, become a member of or a party to any pool, agreement, combination or confederation to fix or limit the amount or quantity of any commodity or article to be manufactured, mined, produced, or sold in this state, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment: *Beechley* v. *Mulville*, (Supreme Court of Iowa,) 70 N. W. Rep. 107.

In the same case the court also held that where an agreement by insurance agents to fix insurance rates provides that all agencies shall be taken away from one who breaks it, a member who does break it cannot recover damages, on the ground of conspiracy to injure his business, from companies for which he was agent under contracts permitting them to revoke the agencies at will, and their special agents, none of whom are members of the agreement, on an allegation that they, acting together to enforce the agreement, revoked the agencies, on his refusal to observe its terms.

Constitutional Law, Ex Post Facto Law

The Supreme Court of New York, Appellate Division, First Department, has ruled that the act of that state of 1893, c. 661, § 153, as amended by the act of 1895, c. 398, making it a misdemeanor for any person who has been convicted of a felony to practice or attempt to practice medicine, is *ex post facto*, so far as it applies by its terms to persons convicted before it took effect, because the illegality of the act constituting the new offense is predicated entirely upon the commission of the former offense, without regard to the present character of the defendant: *People* v. *Hawker*, 43 N. Y. Suppl. 516.

Involuntary Servitude, Deserting Seamen

The Supreme Court of the United States in the recent case of *Robertson* v. *Baldwin*, 17 Sup. Ct. Rep. 326, held that Rev. Stat. U. S., §§ 4598 and 4599, which authorize the apprehension, imprisonment, and return on board of deserting seamen in the merchant service, are not invalidated by the prohibition of "involuntary servitude" in the Thirteenth Amendment; basing its conclusion upon the fact that from time immemorial the contract of a seaman has been a peculiar one, and has always been liable to be enforced against his will.

From this decision Mr. Justice Harlan dissented. His whole opinion is well worth perusal, but the following contains the kernel of it: "It will not do to say that by 'immemorial usage' seamen could be held in a condition of involuntary servitude, without having been convicted of crime. The people of the United States, by an amendment of their fun-

damental law, have solemnly decreed that, 'except as a punishment for crime, whereof the party shall have been duly convicted,' involuntary servitude shall not exist in any form in this country. The adding another exception by interpretation simply, and without amending the constitution, is, I submit, judicial legislation. It is a very serious matter when a judicial tribunal, by the construction of an act of Congress, defeats the expressed will of the legislative branch of the government. It is a still more serious matter when the clear reading of a constitutional provision relating to the liberty of man is departed from in deference to what is called 'usage,' which has existed, for the most part, under monarchical and despotic governments."

Navigable Waters, Control of State

The delegation to the Secretary of War, by act of Congress of Sept. 19, 1890, (26 Stat. at Large, 453, §§ 4, 5, 7,) of authority to direct changes in existing bridges over any navigable waters of the United States, or of bridges to be erected under legislative authority of any state, for the purpose of preventing obstruction to navigation, does not affect the control of a state over navigable waters wholly within its jurisdiction, since the act shows no intention by Congress to exercise exclusive control over such waters; and consequently this act did not deprive the states of power to compel the removal or alteration of bridges erected over such waters without authority: *Lake Shore & M. S. Ry. Co.* v. *State of Ohio*, 17 Sup. Ct. Rep. 356.

Sale of Adulterated Food, Oleomargarine

The Supreme Court of Appeals of West Virginia recently decided that the act of that state (Laws 1891, c. 8) which provides that from and after its passage, it shall be unlawful for any manufacturer or vender of oleomargarine, artificial or adulterated butter, to manufacture, or offer for sale within the limits of the state any oleomargarine, artificial or adulterated butter, whether the same be manufactured within or without the state, unless the same shall be colored pink, and prescribes a penalty for a violation thereof, is not unconstitutional: *State* v. *Myers*, 26 S. E. Rep. 539.

In *Smith* v. *San Francisco & N. P. Ry. Co.*, 47 Pac. Rep. 582, the Supreme Court of California lately held, that a person is not entitled to vote at the meetings or elections of a corporation upon stock in which he has never had any interest, but which is registered in his name for the purpose of enabling the real owner to avoid statutory liabilities, since he is not a *bona fide* stockholder, within the meaning of the statute; (Civil Code Cal., § 312.)

Corporations, Meetings, Voting, Bona Fide Stockholder

In the same case the court also ruled that a written agreement between purchasers of stock in a corporation that they will for five years "retain the power to vote the shares in one body, and that the vote which shall be cast by said shares shall be determined by ballot between them or their survivors," is a proxy, authorizing the vote of all the stock to be cast in accordance with the determination of the majority of the parties thereto; that the fact that the parties stipulated among themselves for such a voting agreement in their contract to purchase the stock is sufficient evidence to support it; that it is immaterial that the voting agreement was not executed until after their bid for the stock was made, when it was executed before they had paid the purchase money; that it was also immaterial that a certificate for part of the stock was issued to each party; and that such an agreement is not against public policy. Beatty, C. J., dissented.

Voting Agreement, Validity

There is an article on the subject of voting trusts, in 35 AM. L. REG. (N. S.) 413.

According to a recent decision of the Supreme Court of Michigan, since the constitution of 1850 reserved to the legislature the right to alter, amend, or repeal any law under which corporations might be formed, a statute providing for representation of minority stockholders in the directory of a corporation, by allowing them to cumulate their votes, is constitutional, as applied to a corporation organized before its passage, but subsequent to the adoption of the constitution, though it changes the method of voting prescribed by its articles of incorporation; the act in question

Cumulative Voting

not being one which deprives the corporation of any substantial right: *Atty.-Gen.* v. *Looker*, 69 N. W. Rep. 929.

One Man Company, Limited Liability, Fraud on Creditors

In a late case before the House of Lords, *Salomon* v. *Salomon & Co., Ltd.*, [1897,] A. C. 22, reversing [1895] 2 Ch. 323, the appellant, a trader, sold a solvent business to a limited company with a nominal capital of forty thousand shares, the company consisting only of the vendor, his wife, a daughter, and four sons, who subscribed for one share each, the terms of sale being known to and approved by the shareholders. In part payment of the purchase money, debentures forming a floating security were issued to the vendor. These were afterwards called in, and fresh debentures issued to a third person, as security for a loan to the vendor. Twenty thousand shares were also issued to him, and were paid for out of the purchase money. These shares gave the vendor the power of outvoting the other shareholders. No further shares were ever issued. All the requirements of the the Companies' Act of 1862 were complied with. The vendor was appointed managing director, bad times came, and the company was wound up, and after satisfying the debentures there would not be enough left to pay the ordinary creditors. The liquidator counterclaimed to a suit on the debentures, alleging that the formation of the company was a fraud on its creditors; but their Lordships held that the proceedings were not contrary to the true meaning of the Companies' Act of 1862; that the company was duly formed and registered, and was not a mere "alias" or agent of or trustee for the vendor; that he was not liable to indemnify the company against the creditors' claims; that no fraud had been practised upon creditors or shareholders; and that neither the company, nor the liquidator suing in its name, was entitled to rescission of the contract of purchase. See 36 AM. L. REG. (N. S.) 18, 161.

Rights of Creditors

When two members of a corporation own the entire stock, and the corporation is indebted to each, but the indebtedness has not been reduced to judgment, neither of them has the right, as a creditor, to ask for the

appointment of a receiver: *Wallace* v. *Pierce-Wallace Pub. Co.*, (Supreme Court of Iowa,) 70 N. W. Rep. 216.

In *The Queen* v. *King*, [1897] 1 Q. B. 214, upon the trial of an indictment for obtaining goods by false pretences, a letter written by the defendant to the prosecutor respecting the goods in question was put into the hands of the prosecutor, who was asked what opinion he formed respecting the occupation or position of the defendant upon the receipt of the letter. Counsel for the defendant objected to this question on the ground that the meaning and construction of the letter was a question for the jury. This objection was overruled; and the question was stated to the Court for Crown Cases Reserved, whether the question and answer were admissible in evidence. That court held, that although the question of the proper inference to be drawn from the letter was for the jury, yet the question was admissible to show the inference of fact drawn from it by the prosecutor.

Criminal Law, Evidence, Opinion of Witnesses as to Meaning of Letter

After his conviction, the defendant was also tried and convicted on an indictment charging him with larceny of the same goods. On the trial it was objected in his behalf that, having been already convicted of having obtained credit by false pretences for the goods mentioned in the indictment, he could not in law be guilty of stealing them. But the trial court overruled this objection, although its reasonableness would seem to be too apparent for argument, and the defendant was convicted. The question of the legality of this conviction was also reserved and the court held it clearly illegal, and quashed it.

Conviction of Obtaining Goods under False Pretences A Bar to a Further Prosecution for Larceny

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A strike of the employes of the charterer, without grievance or warning, and an organized and successful effort on their part to prevent, by threats, intimidation and violence, other laborers, who were willing to do so, from discharging a vessel, will excuse the charterer for a delay in the performance of the work: *Empire Transp.*

Demurrage, Excuse for Delay, Strike

Co. v. *Phila. & Reading Coal & Iron Co.*, (Circuit Court of Appeals, Eighth Circuit,) 77 Fed. Rep. 919.

Elections, Convention, Powers

When a regularly constituted committee has called a convention for the sole purpose of electing delegates to the national party convention, the convention so called has no power to name a new committee without the consent of the electors of the district: *In re Fairchild*, (Court of Appeals of New York,) 45 N. E. Rep. 943.

Arrangement of Ballot

A certificate of nomination by a convention takes precedence of a nomination by petition or nomination papers, and therefore a candidate nominated in the latter way is not entitled to have his name placed on the ballot in the column under the head of his party, in preference to a candidate nominated by certificate, although the former files his nomination first. But in such a case, when the statute provides that all nominations shall be placed under the party title, as designated by them, or if not, under some suitable title, the nominee by petitions or papers is entitled to have his name placed on the ballot under a suitable title, to be designated by the officers who prepare it: *Lowery* v. *Davis*, (Supreme Court of Iowa,) 70 N. W. Rep. 190.

Ballots, Stickers

According to a recent decision of the Supreme Judicial Court of Maine, the ballot law of that state requires the name of a person not printed on the ballot, but whom some one wishes to vote for, to be inserted in the blank space left for that purpose; and a sticker placed over one of the printed names is not a compliance with the statute: *Waterman* v. *Cunningham*, 36 Atl. Rep. 395.

This is another instance of a strict construction of a remedial statute, which jurists would have us believe is improper.

Electric Light Companies, Manufacturing Corporations

In the opinion of the Court of Appeals of Maryland, an electric light company is not a manufacturing industry, within the meaning of a city ordinance exempting from municipal taxation the "machinery and manufacturing apparatus of all manufacturing industries,"

that ordinance having been passed before the legislature classified such companies in the incorporation laws under the head of manufacturing companies: *Frederick Electric Light & Power Co.* v. *Mayor of Frederick City*, 36 Atl. Rep. 362.

Equity, Jurisdiction, Non-Residents

Where a natural water course is so obstructed by a dam built on a non-resident's land, as to work an injury to a resident owner of adjoining land, a court of equity has jurisdiction to redress the injury: *Gordon* v. *Warfield*, (Supreme Court of Mississippi,) 21 So. Rep. 151.

Recovery of Letters

A bill in equity may be maintained for the recovery of letters written by the complainant to her son, and by her son to her, when the former were wrongfully taken by defendant from the possession of the son, and the latter from the possession of the complainant: *Dock* v. *Dock*, (Supreme Court of Pennsylvania,) 36 Atl. Rep. 411.

Evidence, Family Bible

An entry in the family Bible of one whose life is insured, though made by a person who is not a member of the family, is admissible against the plaintiff in an action on the policy: *Union Central Life Ins. Co.* v. *Pollard*, (Supreme Court of Appeals of Virginia,) 26 S. E. Rep. 421.

Quantum Meruit, Customary Charges

In an action by an architect on a *quantum meruit*, the evidence offered by the plaintiff as to the customary charges of architects for similar services is not rendered incompetent by the defendant showing that those customary charges originated in and conform to a rule established by an association of architects: *Laver* v. *Hotaling*, (Supreme Court of California,) 47 Pac. Rep. 593. McFarland, J., dissented.

False Pretenses

The mere fact that a purchaser gives a check, in payment, on a bank in which he has neither money nor credit, is not a fraudulent representation that he has money or credit there, so as to constitute the offense of swindling: *Brown* v. *State*, (Court of Criminal Appeals of Texas,) 38 S. W. Rep. 1008.

In order to constitute the offense of forcible entry at common law, and under those statutes which have adopted the common law definition of that crime, the entry must be accompanied by some act of actual violence or terror directed towards the person in possession; and, therefore breaking and entering an unoccupied house in the absence of the person who had previously been in possession and control thereof, and who still claimed the right to the possession, is not an indictable offense: *Lewis* v. *State*, (Supreme Court of Georgia,) 26 S. E. Rep. 496.

Forcible Entry, What Constitutes, Entering Unoccupied House

An innkeeper or hotel-keeper is a guarantor for the good conduct of all members of his household, including those engaged in his service, and is liable for thefts committed by them of the property of his guests while asleep in rooms assigned them; and the fact that a guest is intoxicated, or that the door of his room is unlocked, will not relieve the landlord of responsibility: *Cunningham* v. *Bucky*, (Supreme Court of Appeals of West Virginia,) 26 S. E. Rep. 442.

Innkeepers, Liability, Theft by Servant

In *West of England Fire Ins. Co.* v. *Isaacs*, [1897] 1 Q. B. 226, the Court of Appeal of England has affirmed the decision of Collins, J., [1896] 2 Q. B. 377, holding, as he held, that the insurer can not only recover from the insured the value of any benefit received by him by way of compensation from other sources, but also the full value of any rights or remedies of the insured against third parties which have been renounced by him, and to which, but for that renunciation, the insurer would have had a right to be subrogated.

Fire Insurance, Rights of Insurer, Subrogation, Remedy Against Assured

The right surrendered in this case was a covenant in a lease to lay out insurance moneys received on repairs to the premises insured. See 35 AM. L. REG. (N. S.) 785.

When a lunatic sets fire to a building, an insurance company, which has paid the loss caused thereby, has a right of

Subrogation, Insurance Company, Fire Caused by Lunatic

action against the lunatic's estate, under the subrogation clause of the policy, to recover the amount so paid; and in such an action the insanity of the defendant cannot be set up as a defense: *Mut. Fire Ins. Co. of Chester Co.* v. *Showalter*, (Superior Court of Pennsylvania,) 3 Pa. Super. Ct. 452.

Judge Collins has also recently held that the general rule of law, based on mercantile custom, by which the broker, and not the assured, is liable to the underwriters for the premiums on a policy of marine insurance, is not limited to the ordinary form of Lloyd's policy, but extends also to policies containing a promise on the part of the assured to pay the premiums: *Universo Ins. Co. of Milan* v. *Merchants Marine Ins Co.*, [1897] 1 Q. B. 205.

Marine Insurance, Policy, Liability of Broker for Premiums

On the trial of an indictment for mutilating and destroying the books of a corporation with intent to defraud and injure it, persons related to its stockholders within the prohibited degree are not competent to serve as jurors; and in determining whether or not a new trial should be granted to the accused on the ground of relationship between jurors and stockholders, the fact that the former, at the time of the trial, were ignorant of any relationship between themselves and some of the stockholders is immaterial: *McElhannon* v. *State*, (Supreme Court of Georgia,) 26 S. E. Rep. 501.

Jurors, Competency, Relationship

In *Sanborn* v. *First Natl. Bk. of Greeley*, (Court of Appeals of Colorado,) 47 Pac. Rep. 660, an attempt was made to change the location of a post-office: and several persons occupying property adjacent to its then location, and wishing it to remain there, agreed to pay a certain sum annually to the owner of the premises occupied by it, or his assigns, in consideration that he would lease the premises to the government for a term of five years at an inadequate rental. The lessor subsequently assigned all his right, title and interest in the lease to another; and thereafter assigned all his property for

Landlord and Tenant, Assignment of Reversion, Appurtenances

the benefit of creditors. The assignee brought suit to recover the sums due under the agreement; and the bank contended that the assignment of the lease carried with it the right to receive the annual payments. The lower court found for the defendant on this ground; but the Court of Appeals reversed that decision, holding that the agreement did not create the relation of landlord and tenant, and that therefore the right to receive payments under it did not pass by a conveyance of the premises as appurtenant to the land.

Libel

An article addressed to the proprietor of a medicine, published in a newspaper, stating that "Your advertisements will not be received in the columns of the 'Landwirth,' although you offer us big pay. We have repeatedly advised our readers that by the manufacture and sale of such medicines the public are swindled out of their money. 'Der Landwirth' does not work in this way, but, on the contrary, desires to be to its readers a sincere and faithful adviser," is libelous *per se: De Shoop Family Medicine Co.* v. *Wernich*, (Supreme Court of Wisconsin,) 70 N. W. Rep. 160.

Charge of Insanity

In *Comfort* v. *Young*, 69 N. W. Rep. 1032, the Supreme Court of Iowa recently held, that when an information charging insanity, filed with the board of commissioners of insanity, is not well grounded, the person who filed it is responsible in an action for libel, unless he acted in good faith, and upon probable cause.

There is an article on the question of the imputation of insanity as a cause of action for libel, in 30 AM. L. REG. (N. S.) 389.

Privileged Communication

In a case lately decided by the House of Lords, *Nevill* v. *Fine Art & Gen. Ins. Co., Ltd.*, [1897] A. C. 68, affirming [1895] 2 Q. B. 156, the plaintiff had acted for some time as agent of the defendant company at his own offices. After some correspondence as to a change of terms, on which the parties could not agree, the secretary of the defendant sent to persons who insured through the plaintiff a circular stating that the agency of the plaintiff at his offices "had been closed by the directors." The

plaintiff then brought an action for libel against the company. On the trial the judge ruled that the statement was capable of a defamatory meaning, but that the occasion was privileged. The jury found a verdict for the plaintiff, that the statement was a libel, that it was untrue, and that the defendant had exceeded its privilege, but did not find actual malice. Judgment was entered thereon. From this the defendant appealed; and both the Court of Appeal and the House of Lords held that judgment should be given for the company, on the ground that the statement was not capable of a defamatory meaning, that it was true, that the occasion was privileged, that the finding of the jury as to excess of privilege was insufficient, and that there was no evidence of malice for the jury.

Malicious Prosecution, Want of Probable Cause, Discharge by Examining Magistrate

The Supreme Court of Iowa, adopting the rule supported by the weight of authority, holds that in an action for malicious prosecution, the fact that the examining magistrate discharged the plaintiff without evidence in his behalf is *prima facie* evidence of want of probable cause, throwing the burden of establishing probable cause on the defendant; and that when the burden of proof is thus cast upon the defendant, it is error to direct a verdict for him: *Hidy* v. *Murray*, 69 N. W. Rep. 1138.

Master and Servant, Dangerous Machinery, Duty to Fence

In a prosecution for a violation of the Factory and Workshop Acts of England of 1878, s. 5, sub-s. 3, and 1891, s. 6, sub-s. 2, which provide that "all dangerous parts of the machinery" in a factory "shall either be securely fenced or be in such position or of such construction as to be equally safe to every person employed in the factory as it would be if it were securely fenced," the occupier of a cotton factory was summoned before the justices of the borough of Blackburn for neglecting to fence the shuttles of his looms. It appeared that shuttles do occasionally, during the process of weaving, fly out of the shuttle-race, (the bed upon which they slide to and fro,) under circumstances which render them dangerous to any persons

who happen to be in the line of flight. The flying out of the shuttles may be caused by the defective condition of the shuttles, the negligence of the weaver in charge of the machine, or by reason of some foreign substance getting accidentally into the shuttle-race, or by a defect in the yarn; but in any case it is of rare occurrence. (In the establisment in question, which contained 1400 looms, but four serious accidents happened from this cause in as many years.) The justices convicted the defendant; but the recorder quashed the conviction on appeal, subject to a case stated for the Queen's Bench Division. That court adopted the conclusion of the justices, holding that the obligation to fence under the act cited was not confined to machinery which was dangerous in itself in the ordinary course of careful working; and that the shuttles, even though not in themselves defective, were "dangerous parts of the machinery," if any of the other enumerated causes of their flying out of the shuttle-race were likely to occur with any degree of frequency; and accordingly remitted the case to the quarter sessions: *Windle* v. *Birtwhistle*, [1897] 1 Q. B. 192.

Negligence of Servant, Liability of Master

The Court of Appeal of England has recently decided a very interesting question in the law of negligence. The defendant employed a man to drive his cart, with instructions not to leave it, and a boy, who had nothing to do with the driving, to go in the cart and deliver parcels to the defendant's customers. The driver left the cart, with the boy in it, and went into a house. While the driver was absent the boy drove on, and came into collision with the plaintiff's carriage. The plaintiff sued the defendant for the damage caused by the collision; and the court held, on appeal, that there is no rule of law that will prevent a master being liable for negligence of his servant, in consequence of which a third person is given opportunity to commit a wrongful or negligent act immediately producing the damage complained of; that it is in each case a question of fact whether the original negligence was an effective cause of the damage; and that in this case the negligence of the driver in leaving the cart was the effective cause of the damage, and

the defendant was liable: *Englehart* v. *Farrant*, [1897] 1 Q. B. 240.

Mechanics' Liens, Architect's Certificates

When a contract provides that the work shall be done under "the immediate supervision" of the architect, and that payment shall be made on the architect's certificates, the owner is not bound by certificates issued, in the absence of the architect, by one to whom he had attempted to delegate his authority: *Monahan* v. *Fitzgerald*, (Supreme Court of Illinois,) 45 N. E. Rep. 1013.

Monopolies, Restraint of Trade

Private by-laws of a Masons' and Builders' Association, the membership in which includes sixty out of seventy or seventy-five mason contractors in a city, requiring the members to pay to the association six per cent. on all contracts taken by them, and to submit all bids for work first to the association, and providing that the lowest bidder shall add six per cent. to his bid before it is submitted to the owner or his architect, are contrary to public policy, and void; and a note given by a building contractor to such an association, of which he was a member, for the percentage due under the by-laws on a contract for building, is invalid, and will not be enforced: *Milwaukee Masons' & Builders' Assn. v. Niezerowski*, (Supreme Court of Wisconsin,) 70 N. W. Rep. 166.

Municipal Corporations, Regulation of Street Railways

A city, which has authority under its charter to regulate the use of the public streets and highways, can enact an ordinance to compel passenger cars operated by trolley or electric power to come to a full stop before crossing intersecting streets; and such an ordinance, if enacted in the manner prescribed by the charter of the city, is legislative in its character, and wil not be set aside as unreasonable in its purpose or effect: *Cape May, D. B. & S. P. R. R. Co.* v. *City of Cape May*, (Supreme Court of New Jersey,) 36 Atl. Rep. 678; *State* v. *City of Cape May*, (Supreme Court of New Jersey,) 36 Atl. Rep. 679.

Negligence, Guardians of the Poor, Liability

Guardians of the poor are not answerable in damages in their corporate capacity for injuries caused by the negligence of their officials in the treatment of poor patients received into workhouse hospitals: *Dunbar* v. *The Guardians of the Poor of the Ardee Union*, (Court of Appeal of Ireland,) [1897] 2 I. R. 76.

Negligence, Reasonable Use of Legal Right, Injunction

In a case recently decided by the Supreme Court of British Columbia, *Canadian Pac. R. R. Co.* v. *Parke*, 33 Can. L. J. 213, it appeared that the defendants owned a lot of ground near the Thompson River, which they irrigated for agricultural purposes, under statutory authority. Without irrigation the land would have been worthless. The soil was gravelly and porous, and in consequence of this the water percolated through, causing the land to slip, and thus pushing out of place the rails of the plaintiff's road, which ran between the defendant's land and the river. The plaintiff asked for an injunction to restrain the defendants from causing it further damage by irrigating their land; but this was refused, on the ground that the legislature, in authorizing the bringing of water on the lands for agricultural purposes, must be taken to have contemplated the mischief which might arise from a reasonable use of that power, and to have condoned it.

Negligence, Contributory, Question for Jury

When a person stands so near to a railroad track that he is drawn under the wheels by the suction of a passing train, the question of his contributory negligence s for the jury; and it is error for the court to charge, as matter of law, either that he was guilty of contributory negligence, or that he was free from negligence, if he stood far enough from the track to avoid being struck by the train: *Graney* v. *St. L., O. M. & S. Ry. Co.*, (Supreme Court of Missouri, Division No. 1,) 38 S. W. Rep. 969.

Negotiable Instrument, Cheque, What Constitutes

In *Industrial Bank of Chicago* v. *Bowes*, 46 N. E. Rep. 10, the Supreme Court of Illinois lately ruled, reversing 64 Ill. App. 300, that an architect's certificate, reciting that a certain amount was due the contractor, and indorsed by the owner with an order to a firm that had loaned him money wherewith to carry

on the building, the funds loaned remaining in the hands of the lender, to be paid out as required in the construction of the building, was a cheque, and not a bill of exchange.

Cheques Payable to Fictitious Person

In a recent case in the House of Lords, *Clutton* v. *Attenborough*, [1897] A. C. 90, a clerk in the account department of the plaintiffs, by fraudulently representing to them that work had been done on their account by B., induced them to draw cheques payable to the order of B., in payment for the pretended work. There was in fact no such person as B. The cheques, when signed by the plaintiffs were sent by them to the account department for postage. The clerk obtained possession of the cheques, indorsed them in B.'s name, and negotiated them with the defendants, who gave value for them in good faith. The cheques were paid to the defendants by the plaintiffs' bankers. After the plaintiffs discovered the fraud they sued the defendants to recover the amount of the cheques as money paid under mistake of fact. Upon these facts their Lordships held, affirming the decision of the Court of Appeal, [1895] 2 Q. B. 707, which affirmed that of Wills, J., [1895] 2 Q. B. 303, that the cheques were "issued" within the meaning of the Bills of Exchange Act, 1882, s. 2; that B. was a "fictitious or non-existing person" within the meaning of s. 7, sub-s. 3 of that act, which provides that "where the payee is a fictitious or non-existent person, the bill may be treated as payable to bearer," although the plaintiffs believed and intended the cheques to be payable to the order of a real person; that the cheques might therefore be treated as payable to bearer; and that the plaintiffs could not maintain their action, as the defendants were holders in good faith and for value.

Nuisance, Street Railroads, Melting Snow by Salt

In *Ogston* v. *Aberdeen District Tramways Co.*, [1897] A. C. 111, the House of Lords recently decided that a street railway company, which after each heavy fall of snow cleared its tracks by a snow-plow and then scattered salt along the rails and adjacent thereto, but did not remove the briny slush thus produced, should be enjoined from continuing the practice.

Partition, Jurisdiction of Equity

The Supreme Court of Texas holds, that, independent of statute, equity has jurisdiction to order property to be sold for partition, when found incapable of division in kind without serious injury to the interests of the parties: *Moore* v. *Blagge*, 38 S. W. Rep. 979.

Partnership, Creditors, One Man Company

In *Potts* v. *Schmucker*, (Court of Appeals of Maryland,) 36 Atl. Rep. 592, a member of a banking firm engaged in another business under a corporate name, owning all the stock himself, except four shares. He conducted the business, and owned all the assets of the concern. The corporation was indebted to the bank for money lent. The bank became insolvent, and the corporation went into the hands of a receiver. Under the circumstances it was held, that as the owner of the corporation was a member of the bank, the latter was not entitled to share in the assets of the corporation until its other creditors had been paid.

Release and Discharge, Railroad Relief Association, Validity

The Supreme Court of Ohio has lately, in accord with the authorities, upheld the validity of the release of liability for injuries given by the members of a railroad relief department. The facts were as follows: The plaintiff, an employe of the company, voluntarily, and with full knowledge of the character and effect of the contract he was assuming, applied for admission to a voluntary relief association, of which the company was a member, contributing large sums to its treasury. His application contained an agreement that the company might deduct from his wages a specified sum per month, in order to form, with other like contributions of the other members, and certain contributions which the company bound itself to make, a relief fund for the benefit of the employé members in case of sickness, accident, or death; and a further agreement that in case of accident the acceptance by him of relief from the relief fund so accumulated should operate as a release of the company from liability for damages. The court held (1) That such a contract is not prohibited by

the act of Ohio of April 2, 1890, (87 Ohio Laws, 149,) which provides that "no railroad company, insurance society or association or any other person shall demand, accept, require or enter into any contract, agreement, stipulation with any person about to enter or in the employ of any railroad company, whereby such person stipulates or agrees to surrender or waive any right to damages against any railroad company, thereafter arising for injury or death, or whereby he agrees to surrender or waive in case he asserts the same, any other right whatsoever," since the contract in question does not waive any right, but expressly reserves it, merely giving the plaintiff an election of remedies after the injury, and providing that the choice of one shall be a waiver of the other; (2) That such a contract is not contrary to public policy; (3) That it does not lack mutuality; and (4) That it is based upon a valid consideration: *Pittsburgh, C., C. & St. L. Ry. Co.* v. *Cox*, 45 N. E. Rep. 641. See 34 AM. L. REG. N. S. 231.

Reward, Apportionment

According to a recent decision of the Supreme Court of California, a person who receives compensation for reporting an offense cannot thereafter procure the conviction of the offender, and claim for that service a reward offered for the "arrest and conviction" of such offender, since the reward cannot be apportioned, and the acceptance of pay for the detection defeats a recovery for the conviction: *Van Horn* v. *Ricks Water Co.*, 47 Pac. Rep. 361.

Set-Off, United States Government, Money Fraudulently Obtained from Postmaster

In *United States* v. *Harris*, (Circuit Court of Appeals, Seventh Circuit,) 77 Fed. Rep. 821, it appeared that one Harris was arrested upon a charge of obtaining money from postmasters upon forged money orders, and was convicted on that charge. While in custody, before conviction, he was searched by a post-office inspector, and a sum of money was taken from his person, which was afterwards deposited in the treasury of the United States. Harris sued the government to recover the money so taken. The court below ruled that

he was entitled to recover, but the Circuit Court of Appeals reversed this decision in part, declaring that although the money taken from Harris was not identified as the same money obtained by his forgeries, and although the postmasters, and not the government, were responsible for the money paid on the forged orders, the government could claim as a set-off to the plaintiff's demand, the amount of any moneys clearly shown to have been fraudulently obtained by him from the postmasters.

Stare Decisis, Constitutional Law

The Supreme Court of Texas has declared that the doctrine of *stare decisis* does not require that a prior decision, in contravention of the constitution, should be followed; and that the decision of a court is not "a law" within the meaning of the provision of the United States constitution which prohibits the states from passing any law impairing the obligations of contracts, so that the subsequent overruling of a decision, in reliance whereon contracts have been made, does not violate that provision: *Storrie* v. *Cortes*, 38 S. W. Rep. 154.

Street Musicians, Right of Householder to Compel Departure

In *Shields* v. *Howard*, [1897] 1 Q. B. 84, Judge Grantham, of the Queen's Bench Division, lately held, that under the act of 27 & 28 Vict. c. 55, § 1, which provides that "any householder within the metropolitan district, . . . may require any street musician or street singer to depart from the neighborhood of the house of such householder on account of the illness or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house, or for other reasonable or sufficient cause," and imposes a penalty for refusal to depart when so required, the householder making the requisition must give to the street musician or singer his reasons for making it.

The Court of Appeals of New York has recently delivered itself of an opinion which will prove of great interest to the

Street Railroad, Fare, Tender, Reasonableness

public, involving, as it does, the disputed question of the reasonableness of a tender of fare on a street-car. The plaintiff had in his possession no smaller amount of money than a five-dollar bill. He tendered this to the conductor, who said, "I am not supposed to change it; you must get off." The plaintiff replied, "I won't get off. You must put me off." The conductor did so, using no unnecessary violence; and the plaintiff sued for damages for the technical assault. It was agreed that the defendant had a rule, (not brought to the plaintiff's notice,) requiring conductors to furnish change to the amount of two dollars, but that there was no rule forbidding conductors to make change for a larger amount. There was no evidence of a custom on the part of plaintiff or of the public of tendering to the defendant five dollars in payment of a five cent fare, and receiving the change, but the plaintiff testified that on a former occasion, and on another line, he had offered a five-dollar bill for his fare, and that it had been changed for him. Upon this state of facts, the court held that the tender was unreasonable, as a matter of law, and that the plaintiff could not recover: *Barker* v. *Central Park N. & E. R. R. Co.*, 45 N. E. Rep. 550.

Electric Cars, Contributory Negligence

It is a question for the jury whether a passenger, who, in the absence of a rule forbidding it, rides on the front platform of an electric car, as he and others have been accustomed to ride, and where his fare is taken without objection, is guilty of such negligence as to preclude his recovery for injuries received in a collision with another car: *Bailey* v. *Tacoma Traction Co.*, (Supreme Court of Washington,) 47 Pac. Rep. 241.

Alighting Passengers Crossing Tracks

The Court of Appeals of Maryland has joined the ranks of those who hold that when a passenger alights from a street car, and in attempting to cross the street behind it is struck by a car coming up on the other track, which he might have seen if he had looked, he is guilty of contributory negligence which will bar his recovering for injuries received: *Baltimore Traction Co.* v. *Helms*, 36 Atl. Rep. 119. The court is very careful to

cite all the authorities supporting its view, but ignores those which hold a contrary doctrine. See 35 AM. L. REG. (N. S.) 532, 794.

Taxation, Exemption of Manufacturers

Owners of a linotype machine, with which they make linotypes for the publication of newspapers or books, are not manufacturers of machinery, so as to be exempt from taxation under a constitutional provision exempting such manufacturers: *Nicholson* v. *Board of Assessors*, (Supreme Court of Louisiana,) 21 So. Rep. 167.

Torts, Joint Tort Feasors, Horse-racing

Two persons unlawfully racing their horses together on a street are jointly liable to a third person who attempts to cross in front of them, and without fault on his part is run against and injured by one of them, if, but for the race, there would have been no accident: *Hanrahan* v. *Cochran*, (Supreme Court of New York, Appellate Division, Fourth Department,) 42 N. Y. Suppl. 1031.

Preventing Enforcement of Decree

The same court has lately held, that a wife, who has been decreed alimony, pending divorce proceedings, can maintain an action against one who has induced and aided her husband to leave the state, in order to avoid the payment of the alimony, as to which he was then in default: *Hoefler* v. *Hoefler*, 42 N. Y. Suppl. 1035.

Trademark, Simulation of Packages, Injunction

In a recent suit in a federal court to restrain the defendant from selling goods in packages similar to those of the complainant, where the defendant's packages resembled those of the complainant in numerous particulars besides those of size, color and form, it was held that an injunction should be granted restraining the sale of that particular form of package, or any other form which, by reason of the collocation of size, shape, color, lettering, spacing and ornamentation, might present a general appearance as closely resembling complainant's packages as the

one complained of, but that a clause should be added to the effect that the injunction should not be construed as preventing the sale of packages of the size, weight, shape or color of complainant's package, provided that they were so differentiated in general appearance as not to be calculated to deceive the ordinary purchaser: *N. K. Fairbank Co.* v. *R. W. Bell Mfg. Co.*, (Circuit Court of Appeals, Second Circuit,) 77 Fed. Rep. 869.

This case stands in marked contrast to that of *Lafean* v. *Weeks*, 177 Pa. 412. 36 AM. L. REG. (N. S.).

Trusts, Following Trust Funds, Limitation of Rule

The rule permitting the owner of a fund, which has been misappropriated by one who held it in trust or for a specific purpose, to follow the trust property into the hands of the trustee, or of a receiver, in case of insolvency, only permits the owner to pursue the fund in kind, or in specific property into which it has been converted, or, if the fund has been mingled with other property of the trustee, to establish a charge on the mass of that property for the amount of such fund, and does not give the owner of the fund any rights, in preference to other creditors of the trustee, in property into which the trust fund has in no way entered: *Met. Nat. Bk. of Kansas City, Mo.* v. *Campbell Commission Co.*, (Circuit Court, W. D. Missouri, W. D.,) 77 Fed. Rep. 705.

Trust For Support, Spendthrift Trust

When the income of a fund bequeathed by a testator is, by the terms of the will, to be "deposited" in the hands of his executors for the benefit of his daughter during her life, to be invested, and the income paid over to her, without any provision against anticipation or alienation, the fact that it is stated to be "for her support" will not make it a spendthrift trust, and the same will be subject to the payment of her debts: *Young* v. *Easley*, (Supreme Court of Appeals of Virginia,) 26 S. E. Rep. 401.

According to a recent decision of the Court of Civil Appeals of Texas, *Lottman Bros. Mfg. Co.* v. *Houston Waterworks Co.*,

Water Companies, Liability for Failure to Furnish Water

38 S. W. Rep. 357, a water company which has contracted to supply a private corporation with water in case of a fire, in consideration of an annual rental, is liable for its failure to do so to the extent of such damage as may be proved to arise from such failure as the proximate cause.

Waters and Water-courses, Diversion of Spring

When the water of a spring flows through a definite channel, or by percolation, into a running stream, of which it is the chief source of supply, an injunction will lie at the suit of a prior appropriator of the water rights in that stream, to restrain a diversion of the water of the spring by the owner of the land on which it is situated: *Bruening* v. *Dorr*, (Supreme Court of Colorado,) 47 Pac. Rep. 290.

Waters and Watercourses, Percolating Waters, Marshy Ground

In *M'Nab* v. *Robertson*, [1897] A. C. 129, the House of Lords lately held, affirming 33 S. L. R. 497, that the waters of a spring, which do not flow in a defined stream, but ooze through marshy ground into a pond, are percolating waters; and that a grant of "the waters in the said pond, and in the streams leading thereto" would not preclude the grantor from drawing off from this marshy ground the water of the above-mentioned spring.

Conditional Wills

The Probate Division of England has recently decided two important cases in respect of testamentary documents. In the first case, *In the Goods of Spratt*, [1897] P. 28, the deceased, a military officer in active service in New Zealand, in 1864 wrote to his sister a letter, of which the material part is as follows: "If we remain here taking pahs for some time to come the chances are in favor of some more of us being killed, and as I may not have another opportunity of saying what I wish to be done with any little money I may possess in case of an accident, I wish to make everything I possess over to you. In the first place, there is money at . . . Keep this until I ask you for it." The testator

survived the war, and died in 1896, not having revoked the disposition made in this letter. The next of kin urged that this was to be regarded as a conditional will, and therefore revoked by his survival; but the court held that the disposition of the deceased's property, according to the terms of the letter, was not dependent on his death while in active service; that the letter was therefore not a conditional will; and being a good military will, was entitled to probate.

In the other case, *Halford* v. *Halford*, [1897] P. 36, the testator, a Scotchman, by his will gave the residue of his estate to his wife for life during her widowhood, and in case of her re-marriage gave her one-third for life, the remainder to various legatees. There was no disposition of the residue in the event of her remaining a widow. Subsequently, being about to sail with his wife from Calcutta to England, the testator wrote a letter to his brother in England, which was in form a good testamentary document at Scotch law, and contained the following language: "If anything happens to us on the way, my will has been accidentally packed away in a tin box, to which I cannot now get access, as I forget which box it has been put into. However, if we both come to grief, I appoint you my executor; if I only, then in conjunction with Nan." The letter then went on to deal with the disposition of his estate after his wife's death, in the event of her surviving him. Neither the testator nor his wife died during the voyage. It was argued that this will also was conditional, and revoked by the safe arrival of the testator; but the court held that it was a valid testamentary document, and admitted it to probate as such.

Ardemus Stewart.